

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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DIONDRAE PARKER,

Plaintiff,

v.

NED SCHUERING, *et al.*,

Defendants.

Case No. 3:23-cv-00137-MMD-CSD

ORDER

*Pro se* Plaintiff Diondrae Parker, who is currently in the custody of the Nevada Department of Corrections (“NDOC”), brings Eighth Amendment claims under 42 U.S.C. § 1983. (ECF Nos. 1-1, 3.) Before the Court is the Report and Recommendation (“R&R”) of United States Magistrate Judge Craig S. Denney, recommending that the Court: (1) grant Plaintiff’s motion for appointment of counsel and refer this case to the Pro Bono Program; (2) deny Defendants’ motion for summary judgment without prejudice to allow Defendants to seek leave to re-file after counsel is appointed; (3) grant Defendants’ motion to seal; and (4) deny Plaintiff’s motion requesting acceptance of service as to Defendant Schuering in light of the recommendation for appointment of counsel. (ECF No. 56.) Having reviewed the filings, the Court will adopt the R&R in full.

This Court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where a party timely objects to a magistrate judge’s report and recommendation, the Court is required to “make a de novo determination of those portions of the [report and recommendation] to which objection is made.” *Id.* Here, Plaintiff filed an objection where he challenges only the recommendation to grant the motion to seal. (ECF No. 57.) Defendants have not objected but the deadline for objection has not expired. However, the Court finds it appropriate to review the R&R de novo without waiting for Defendants to file an objection

1 to avoid further delay.

2 Magistrate Judge Denney recommended granting Defendants' motion to file  
3 certain exhibits that contain Plaintiff's medical files and information relating to Plaintiff's  
4 mental health episode. (ECF No. 56 at 3.) Plaintiff objects, raising concerns about the  
5 need for the exhibits to be considered and presented to support his claims. (ECF No. 57.)  
6 Plaintiff appears to misunderstand the purpose of sealing—sealing prevents public  
7 access but the exhibits are still part of the case and may be offered for admission at trial.  
8 The Court overrules Plaintiff's objection and agrees with Magistrate Judge Denney that  
9 compelling reasons exist to support granting Defendants' motion to seal.

10 Magistrate Judge Denney recommended granting Plaintiff's motion for  
11 appointment of counsel primarily because Plaintiff has demonstrated acute mental health  
12 issues and a lack of access to his legal work. (ECF No. 56 at 3.) The Court agrees that  
13 these reasons, coupled with the nature of the allegations supporting the excessive force  
14 claims as alleged in the Complaint, support a finding that exceptional circumstances exist  
15 to warrant appointment of counsel. And because the Court will refer this case to the Pro  
16 Bono Program, the Court agrees with the recommendations to deny the two remaining  
17 motions without prejudice.

18 It is therefore ordered that Judge Denney's R&R (ECF No. 56) is accepted and  
19 adopted in full.

20 It is further ordered that Plaintiff's objection (ECF No. 57) is overruled.


21 It is further ordered that Plaintiff's motion for appointment of counsel (ECF No. 53)  
22 is granted. The Court refers this case to the Pro Bono Program adopted in Amended  
23 General Order 2019-07 for the purpose of screening for financial eligibility (if necessary)  
24 and identifying counsel willing to be appointed as pro bono counsel for Plaintiff. See  
25 Amended General Order 2019-07, Section 1(a)(1) ("At any time during the course of  
26 litigation, an assigned Judge may refer the case to the Program for the appointment of  
27 pro bono counsel."). The scope of appointment is for all purposes. By referring this case  
28 to the Program, the Court is not expressing an opinion as to the merits of the case.

1 It is further ordered that Plaintiff's motion requesting that service be accepted for  
2 Defendant Ned Schuering (ECF No. 54) is denied without prejudice to Plaintiff's counsel  
3 seeking any appropriate relief.

4 It is further ordered that Defendants' motion for summary judgment (ECF No. 36)  
5 is denied without prejudice and with leave to refile after Plaintiff has secured counsel.

6 It is further ordered that Defendants' motion for leave to file certain exhibits under  
7 to seal (ECF No. 37) is granted.

8 DATED THIS 11<sup>th</sup> Day of September 2024.

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13 MIRANDA M. DU  
14 CHIEF UNITED STATES DISTRICT JUDGE  
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